



Association of
Title IX Administrators

Time with IX

Investigation Strategy & Best Practices

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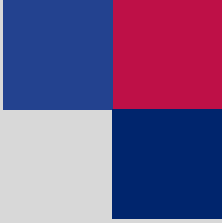
Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

AGENDA

- 1 Virtual Investigations
- 2 Recording Interviews
- 3 Importance of Following Policy and Procedures



VIRTUAL INVESTIGATIONS

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Opportunities

- Time zones are not an obstacle
- Physical meeting locations are much less of a limiter
- Easier to exchange information/evidence
- Less emphasis on suitable meeting space
- Simplicity of recording

Challenges

- Requires individuals be tech savvy
- Accessibility challenges (closed captioning and language interpreting limitations, access to technology, etc.)
- Present distinct challenges for accomplishing primary investigation objectives
 - Setting the environment
 - Developing rapport
 - Safeguarding privacy
 - Managing advisors

TECH SAVVY

Know your technology:

- Setting up a meeting
 - Unique meeting IDs
- What do attendees see when they join? Waiting room?
- How do you see all attendees?
- Recording feature
- Screen sharing
- Separate rooms for interviewees/advisors
- Troubleshooting/assistance

SETTING THE ENVIRONMENT

- Your interview space
 - Adequate lighting
 - Appropriate background
 - Visible privacy
- Interview dress
 - Similar considerations to in-person
- Expectations for interview/advisors
 - Communicate them ahead of time
- Accessibility
 - Request any accessibility needs be communicated ahead of time

RAPPORT BUILDING

- Create a level of comfort
 - Active listening (eye contact, for example)
- Anticipate obstacles
 - Accessibility services
 - Contingency for dropped signal
 - Awkwardness of virtual setting
 - Guarantee of privacy
 - Availability of breaks, breakout rooms
- Trauma-infused techniques
 - More difficult to read expressions, nonverbals
 - When in doubt, stop and ask
- Demeanor observations
 - Limited ability to read body language
 - More plausible explanations for distractedness
- Full-face vs. large room
- Multiple participants

SAFEGUARDING PRIVACY

Your interview space

- Inside, not outside
- In an enclosed space
- Explain potential noises or interruptions
- Headphones when necessary
- Video on – don't mute without explanation
- Notifications, phone calls, other computer sounds
- Similar considerations for interviewee, advisor, other attendees

MANAGING ADVISORS

- Ensure they have a private way to communicate with advisee
 - Warn about embedded chat – private vs. broadcast
- Explain breakout rooms or breaks upon request
- Similar limitations to in-person interviews
- Don't unilaterally use "mute" or "kick" options
- May ask advisors, advocates, others to mute at beginning
- Video on, similar expectations for privacy
- Interviewee, advisor, others in the same room?



RECORDING INTERVIEWS

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- No requirement in Regs to record interviews, only hearings
- Decision to record left to institutions
- Considerations regarding record keeping of recording, distribution, destruction of evidence, etc.
- Consideration of state laws that govern recording (*i.e.*, one-party vs. two-party consent)
 - Consistent recording should be practice, but what if a party to a complaint does not consent, while other parties and witnesses consent in a two-party consent jurisdiction?
- Creation of a public record?
- Requests for inspection of recording as opposed to transcript



IMPORTANCE OF FOLLOWING INSTITUTIONAL POLICY AND PROCEDURES

REMINDER: FOLLOW YOUR POLICY

- Read our recent tip of the week on this topic: <https://www.atixa.org/blog/caselaw-reminds-administrators-of-the-price-of-failing-to-follow-institutional-title-ix-policy/>
- Following policy limits legal liability
- Deviations of policy should be clearly expressed in writing to parties in a timely manner
- Reminder to comprehensively know your policy prior to the commencement of an investigation, to ensure school is complying with the rules and procedures it set forth
- When in doubt, consult with legal counsel



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Questions?



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